

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ARTHUR VASQUEZ,
TDCJ No. 1772951,

Petitioner,

V.

STATE OF TEXAS,

Respondent.

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No. 3:22-CV-2911-D

ORDER

I

The United States Magistrate Judge made findings, conclusions, and a recommendation (“FCR”) in this case on January 3, 2023. On January 20, 2023 petitioner Arthur Vasquez (“Vasquez”) filed objections and a notice of appeal of the FCR. He filed motions for leave to appeal *in forma pauperis* on January 20 and 26, 2023.

Because Vasquez’s appeal is taken from the FCR of the magistrate judge, which is an unappealable order, the notice does not deprive this court of jurisdiction to adopt the FCR of the magistrate judge.

II

The undersigned district judge has reviewed *de novo* those portions of the FCR to which objections have been made and has reviewed the remaining portions for plain error. Finding no error, the court adopts the findings, conclusions, and

recommendation of the United States Magistrate Judge.

III

Considering the record in this case and pursuant to Fed. R. App. P. 22(b), Rule 11(a) of the Rules Governing § 2254 and proceedings, and 28 U.S.C. § 2253(c), the court denies a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's FCR filed in this case in support of its finding that Vasquez has failed to show that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" or "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IV

Regarding Vasquez's motions for leave to appeal *in forma pauperis* on appeal, under Fed. R. App. P. 24(a)(3)(A) and 28 U.S.C. § 1915(a)(3), and for the reasons stated in the magistrate judge's FCR and in this order, the court certifies that this appeal is not taken in good faith and denies Vasquez's motions.

The court notifies Vasquez, however, that he may challenge this finding, pursuant to *Baugh v. Taylor*, 117 F.3d 197 (5th Cir. 1997), by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of the date of this order.

No filing fee is assessed because the Prison Litigation Reform Act does not apply to proceedings under 28 U.S.C. § 2254.

SO ORDERED.

January 30, 2023.



SIDNEY A. FITZWATER
SENIOR JUDGE